

INTER-LOCAL COOPERATION AGREEMENT

THIS AGREEMENT is made by and entered into between the CITY OF WINLOCK and LEWIS COUNTY, both political subdivisions of the State of Washington. This Agreement is entered into pursuant to the Interlocal Cooperation Act, RCW Chapter 39.34. This Agreement is intended to address joint management of the City's urban growth area as shown on the official comprehensive plan of the County.

WHEREAS, the County has adopted certain City land use, development and building regulations by reference to apply to the City's designated unincorporated urban growth area, and

WHEREAS, consistent application of such regulations will facilitate development within the UGA in accord with the comprehensive plan of the City and RCW Chapter 36.70A, and

WHEREAS, it is the long term goal of the City to annex the unincorporated UGA into the City, and

WHEREAS, the parties recognize that until those annexations are completed, it is in the public interest for the City to administer the County's land use, development and building regulations within the unincorporated UGA on behalf of the County, and

WHEREAS, it is appropriate that in order to implement such an arrangement an inter-local agreement be executed between the parties to set forth the conditions and terms of that arrangement.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the City of Winlock and Lewis County agree as follows:

1. Purpose. This Interlocal Agreement is intended to provide an efficient way for permit applicants in the unincorporated portion of the Winlock UGA to secure development review, approval and inspections. The parties wish to establish a cooperative undertaking under which the City would issue and administer development permits for this area as an agent for the County and consistent with the regulations adopted by the County.

2. Means of Joint Undertaking. No separate legal entity shall be created to implement the terms of this agreement. The City Attorney and the County Chief of Staff shall provide joint oversight to administer this agreement.

3. Definitions. All definitions contained within the regulations specified in paragraph 4 below shall have the meanings as specified within those regulations. For purposes of this Agreement, the terms below shall have the following meanings:

(a) "Agent") as used herein means the City, which shall exercise such powers and duties within the Winlock UGA, on the County's behalf, subject to such control by the County and consent by the City as set forth in this agreement and Title 36 RCW. ||

(b) "Winlock UGA" means the urban growth area adopted pursuant to RCW 36.70A.110 as illustrated in Ch. 17.200 LCC, and in conjunction with the comprehensive plan of the City.

(c) "County" means Lewis County.

(d) "City" means the City of Winlock, Washington.

(e) "County Regulations" means any and all development, building and land use regulations enumerated in paragraph 4 below, and adopted by reference within the Lewis County Code (LCC).

(f) "Capital Investment" means any roadway or roadway feature exceeding \$100,000 in construction cost which is approved by the County on or after the date of this agreement, and which is fifty percent (50%) or more completed during the effective dates of this agreement.

(g) "Code Enforcement" (for purpose of this agreement) means any action taken by the City relating to any specific permit or approval issued by the City to apply the County regulations referenced in paragraph 4 below.

(h) "Nuisance Abatement" (for purpose of this agreement) means any action taken by the County to apply any County Code or regulation not referenced in paragraph 4 below.

(i) "Roadway feature" is any improvement within, or adjacent to (pursuant to easement) the right-of-way that materially supports roadway function such as: traffic signals, traffic control devices, roadway signage, bridges, drainage structures and storm water facilities.

4. City of Winlock Regulatory Responsibilities.

Development within the unincorporated Winlock UGA shall be governed by County regulations adopted by the County for that area, and, where applicable, by the official zoning maps of the County; EXCEPT, that the following City and County regulations and procedures, as published in the Winlock Zoning Code or development regulations, and Lewis County Code (LCC), respectively, and together with amendments noted below, are expressly adopted for the purposes of this agreement and shall govern development within the unincorporated Winlock Urban Growth Area:

(a) City of Winlock Comprehensive plan;

(b) Development within the City of Winlock Urban Growth Area shall be governed by Lewis County policies and development regulations adopted for that area, and, where applicable, by the official zoning maps of the County; EXCEPT, that the following City and County regulations and procedures, namely: the City of Winlock Comprehensive Plan and Zoning Ordinance, adopted on May 22, 2006 by Ordinance No. 896, and the Lewis County Code (LCC), respectively, and together with any amendments noted below, are expressly adopted for purposes of this Chapter by this reference, as follows:

Comment [dj1]: The language reflects Washington court reliance on common law for Principal/Agent analysis, which is also appropriate to defining the relationships between the County and City under RCW 36.34—and appropriate vis-a-vis the concerns the County possesses with respect to an agent acting in the name of the County. See, e.g., *Harvey v. County of Snohomish*, 124 Wn.App. 806, 809-813, 103 P.3d 836 (2004) rev. den. 155 Wn.2d 1007, 122 P.3d 728 (2005): "Public agencies cannot use interlocal cooperation agreements to shield themselves from their obligations and responsibilities under the law. . . . This principle is consistent with the law of agency. . . . Moreover, the interlocal cooperation agreement statute specifically states that public agencies cannot escape their legal obligations or responsibilities simply by entering into an interlocal cooperation agreement. RCW 39.34.030(5) states: No agreement made pursuant to this chapter relieves any public agency of any obligation or responsibility imposed upon it by law..."

Comment [dj2]: Agency is the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." *City of Tacoma v. William Rogers Company, Inc.*, 148 Wn.2d 169, 190, 60 P.3d 79 (2002) citing *Walter v. Everett Sch. Dist.* No. 24, 195 Wash. 45, 48, 79 P.2d 689 (1938) (quoting *Restatement of Agency* § 1) (1933); see also *Matsumura v. Eilert*, 74 Wash.2d 362, 368, 444 P.2d 806 (1968) (citing *Restatement (Second) of Agency* § 1 (1958)).

- (i) Shoreline Master Program for Lewis County and Shoreline Substantial Development Permits and Exceptions under Chapter 17.25 LCC;
- (ii) Critical Areas Ordinances, Chapter 17.35 LCC;
- (iii) Zoning Code of the City of Winlock, except as expressly pre-empted by referenced portions of the Lewis County Code, noted herein.
- (iv) City of Winlock Development standards: including building, residential, plumbing, mechanical, fire and public works standards and codes.
- (v) Lewis County Code (LCC) Titles 12 & 15 LCC, Telecommunications franchising and wireless communications;
- (vi) Title 17 LCC, Airport obstruction zone permits;
- (c) City of Winlock code for SEPA review, except where Title 17 LCC, SEPA review, is solely applicable. A city staffer shall be designated to perform the function of Responsible Official under SEPA;
- (d) Appeals of any decision or issued by the City hereunder, to the extent it is appealable, shall be made to a Special Deputy Hearing Examiner under contract with the County, who for purposes of such appeal shall operate as the City Hearing Examiner. Such appeals shall be heard in City of Winlock facilities and conducted in accord with all procedures set forth therefor under County ordinances and regulations for hearings examiner actions. City staff shall present the case report and defend the action taken in conjunction with these appeals. All appeals from the Hearing Examiner shall be by LUPA petition under Ch. 36.70C RCW.
- (e) The County shall provide the City with a copy of the following maps for the Winlock UGA area. Such maps may be copies of those published by other agencies (e.g. NFIP) or may be as depicted on an official GIS map published by the County. The City shall use such maps for determining whether or not a proposal is within an environmentally sensitive area as provided in the adopted regulations:
 - (i) FEMA Flood Insurance Rate Map (100 year floodplain)
 - (ii) Shoreline Environment Designation Map
 - (iii) Steep Slope Area
 - (iv) Geologically Hazardous Area
 - (v) Aquifer Recharge Area
 - (vi) National Wetland Inventory (NWI) Area
- (f) The City shall not approve any land use that causes resulting service levels to drop below adopted levels of service for County roads as cited in the Transportation Element of the adopted County Comprehensive Plan, without first requiring mitigation acceptable to the County. The City shall use the SEPA and/or a site plan process (whichever is applicable) to obtain approval of the County for such mitigation.
- (g) Authority over Lewis County Board of Health regulations on potable water and on-site septic systems shall be retained by Lewis County.

5. County Regulatory Responsibility. The County shall remain responsible for the following regulations, actions, approval requirements and/or permitting processes:

(a) Any and all improvements associated with franchise agreements allowed or required by state law within the county rights-of-way. Any and all actions pertaining to county roads and rights of way allowed or required by state law.

(b) Any road closures and weight limitations on County roads, subject to notification of the City.

(c) Any road standards and access to County roads. The County shall respond to the City's development processes to approve, modify, or deny such road standards or access when associated with a development permit application or proposal.

(d) Preliminary and final plats may be approved and signed by the Board of County Commissioners after a recommendation has been received from the City, containing findings and conclusions, that all applicable requirements of Title 19 CMC and RCW 58.17 have been accomplished, and that all elements for recording have been met.

(e) Any County regulation not contained the City of Winlock Zoning Code or development codes, as noted above, and which the County desires to administer under its own authority.

(f) Nothing in this agreement changes any County Board of Health and/or Health Department jurisdiction or authority regarding potable water or septic system approvals.

6. Utilities. The City may agree to make sewer and water utility service available to all properties within the City of Winlock UGA consistent with all applicable City ordinances—and regulations, provided; any application incorporating any private water system, well or private sewage disposal system which may be processed by the City shall be consistent with applicable County regulations and approved by the County. All utilities franchised by the County and located within County rights-of-way shall be administered by the County pursuant to LCC Title 12.

7. Administration.

(a) The County hereby delegates to the City, as an agent for the County pursuant to this agreement, the authority within the unincorporated Winlock UGA to receive and process development permit applications, collect application and permit fees, submit staff recommendations, make legal, statutory and regulatory determinations and interpretations associated therewith, enter final decisions pursuant to the applicable regulations, and issue permits under the County regulations referenced in section 4 above.

(b) Any appeal initiated against a City permit or approval decision rendered by the City under this agreement shall be heard and decided by a special deputy hearings examiner, and the City shall be responsible for such appeal(s). Any appeal initiated against a County permit or approval decision rendered by the County shall be heard and decided by the applicable County process, and the County shall be responsible for such appeal(s).

(c) Any application for any conditional use permit, variance or special use permit occasioned by the application of regulations administered by the City shall be heard and decided by the applicable City process, and the City shall be responsible for such application(s). Any application for any variance or other quasi-judicial decision occasioned by the application of regulations administered by the County shall be heard and decided by the applicable County process, and the County shall be responsible for such application(s). Any UGA project related notices published by the City or the County pursuant to their specific quasi-judicial process shall also be forwarded to the planning department or division of the other jurisdiction.

(d) Unless otherwise specified in this agreement, or other adopted regulation or standard, the fee structure established for applications authorized to be heard and decided by the City will be as prescribed in CMC Appendix 'A' (schedule of fees and charges). This schedule will not apply to any applications required to be heard and decided by the County.

(e) This agreement shall authorize and direct the city to perform compliance inspections and effect any necessary corrective action pursuant to its delegated authority for any permit or use approved by the City within the unincorporated Winlock UGA.

(f) The City shall be responsible for code enforcement arising from permits issued by the City within the unincorporated Urban Growth Area. The County shall be responsible for abatement of nuisances within the unincorporated Urban Growth Area.

8. SEPA Regulations and Administration. It is the objective of this Agreement that the City performs functions and actions required by the State Environmental Policy Act (SEPA) for the County within the unincorporated UGA. The terms of this agreement shall constitute compliance with WAC 197-11-944 (determination of lead agency), provided; the County shall retain lead agency status for all County sponsored projects. Such SEPA requirements are contained in the City Zoning Code or development codes and shall be used by the City for making SEPA determinations under this agreement.

9. Fees. As compensation for performance under this Agreement, the City shall collect and retain all fees payable for applications made and/or permits issued pursuant to this agreement. County regulations, other than those enumerated in paragraph 4 above, which do not authorize a fee structure are not included in this agreement.

10. Annexation of streets and roads. The City agrees that it will include all reasonably related abutting and connecting streets and roads within an annexation and that the annexation will not create a County island or peninsula substantially surrounded by property within or to be within the City limits once the annexation is complete.

11. Reimbursement for City and County Capital Investments within the unincorporated UGA. The City and Lewis County shall negotiate in good faith the amount of reimbursement for the locally funded portion of any capital investment constructed by the County, including County roads within the unincorporated Winlock UGA at the time it is annexed by the City, based on an adopted depreciation schedule. The basis for cost recovery (absent specific negotiation) shall be the County's portion of the project cost depreciated along a straight line for the useful life of the improvement. Unless otherwise mutually excluded, the useful life of the project shall be 20 (twenty) years. Project costs shall include all costs incurred for the improvement (such as: engineering, permitting and construction).

12. Mitigation for Loss of Other Tax Revenues. The City and County agree to appropriate revenue sharing for County road fund revenues lost to annexation actions by the City, pursuant to the following schedule: 50% (fifty percent) revenue for the first tax-eligible year and 25% (twenty-five percent) revenue for the second tax-eligible year. All revenue shall go to the City in the third year following annexation.

13. Reports. The City shall provide to the County a yearly status report as part of the required development review process, listing all applications processed by the City under this agreement and their status. The County shall have open access to all permitting information and documents held by the City pertaining to this agreement, and may participate in the weekly SPRC process.

14. Term of Agreement. This Agreement shall commence upon completion of the required signatures hereon, and run for an initial period of five years. This agreement shall automatically be extended annually thereafter unless terminated as provided herein. Either party may terminate this Agreement at will by giving the other party at least six (6) months notice thereof. Either party may also terminate this Agreement for cause by giving the other party not less than thirty (30) days notice and by giving the other party reasonable opportunity to cure any alleged defect or lack of performance; provided, however, any permit legally vested under the terms of this agreement shall remain subject to the terms of this agreement, and this provision shall survive any termination of this agreement.

15. Hold Harmless and Indemnification. The City shall protect, save harmless, indemnify, and defend, at its own expense the County, its elected and appointed officials, officers, employees and agents from any actions, suits, liabilities, losses, costs, expenses, damages or claim for damages of any nature whatsoever arising out of the City's performance of this agreement, including but not limited to: the processing development permit applications, collection of application and permit fees, submission of staff recommendations, legal, statutory and regulatory determinations and interpretations associated therewith, final decisions pursuant to the applicable regulations, and the issuance permits under this interlocal, together with any appeals, claims, suits, actions or penalties associated therewith. The County shall protect, save harmless, indemnify, and defend, at its own expense the City, its elected and appointed officials, officers, employees and agents from any actions, suits, liabilities, losses, costs, expenses, damages or claim for damages of any nature whatsoever arising out of the County's performance of this agreement.

16. Dispute Resolution. The City and the County agree that if a formal disagreement arises between the parties as to the application, affect or interpretation of this Agreement which cannot be reasonably resolved between the parties, they may first refer the matter to dispute resolution, as may be agreed between the parties.

17. Amendments to this agreement. Amendments to any provision of this agreement must be presented in strikethrough and underline format, approved by both parties by their signatures thereon, and subsequently attached to this agreement.

18. Severability. If any portion of this Agreement shall be determined to be invalid by a court or other body with jurisdiction, the remaining portions shall remain valid and enforceable.

19. Authority. This agreement is entered into under the authority of RCW 39.34.040.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____day
of _____, 2006.

CITY OF WINLOCK:

By:

Its:

LEWIS COUNTY, WASHINGTON:

By:

Its: